

<b>Maricopa County Environmental Services Department Policy and Procedure</b>	DPPN: 10-04-16* DO Page 1 of 21	Last Review 11/04
	<b>APPROVED:</b>	
Initiating Department: Director's Office		Issue Date 11/19/04
Subject: Legal Enforcement of the Maricopa County Environmental Health Code		Next Review 11/06

#### I. PURPOSE

To establish uniformity of legal action pursuant to the Maricopa County Environmental Health Code (MCEHC).

#### II. BACKGROUND

Establishment suspension/revocation proceedings and citation issuance requirements are critical for gaining compliance to the MCEHC. Cease and Desist Orders are also essential for MCEHC compliance. Legal enforcement is implemented to eliminate situations of potential harm to public health. Maricopa County Environmental Services Department personnel enforce numerous MCEHC regulations. This policy provides procedural guidance for enforcement implementation. An enforcement flow chart is attached to clarify when legal action is appropriate in each situation. (Appendix A).

#### III. REFERENCE

Maricopa County Environmental Health Code (MCEHC) and Arizona Revised Statutes (A.R.S.) Title 36 and Title 49.

#### IV. APPLICABILITY

This Policy and Procedure applies to Environmental Health Division, Water and Waste Management Division, and Executive Administrative Services.

#### V. PROCEDURES

The Department responds to violations of the MCEHC by utilizing administrative and judicial enforcement action. The enforcement response selected for a particular matter will be initiated as follows:

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\*This Policy and Procedure supersedes DPPN 10-97-16 BS, dated 11-19-1997.

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A. Environmental Health Division Administrative Enforcement Action

1. Suspension

An Environmental Health Specialist, R.S., will follow suspension procedures in cases of severe violations which present an imminent hazard to public health or the environment in a permitted establishment. Unless otherwise provided by law or applicable Departmental policy, an Environmental Health Specialist, R.S., will follow suspension procedures as outlined in Environmental Health Division Policy EH-IN-27.

Upon issuance of a Notice of Suspension, the holder of the permit may immediately move to vacate the Notice of Suspension and the Director shall hear such motion within five (5) days.

In no event may a Notice of Suspension remain in effect for more than twenty-five days. If violations are not corrected or a hearing is not requested within the twenty-five (25) day period, Enforcement or regional office shall file a revocation request with the Division Manager or take additional action to ensure the establishment is posted closed.

2. Notice to Appear and Complaint (Citation)

A Citation may be issued for severe violations of the Environmental Health Code at permitted establishments when written or verbal notification fails to achieve compliance. A Citation may be issued to mobile food vendors for violations of the Environmental Health Code without prior written or verbal notice. A person who violates Maricopa County Environmental Health Code regulations is guilty of a class 3 misdemeanor if the person holds a valid permit issued by Maricopa County Environmental Services Department or a class 2 misdemeanor if the person does not hold a valid permit (A.R.S. 36-183.03, 36-183.06, 36-183.07, and MCEHC Chapter I, Regulation 8).

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The following procedure will be implemented when a Citation is issued:

- a. Inform all individuals responsible for causing the violation of the associated health significance.
- b. Obtain a valid identification (Driver's license or other government issued ID) which includes the full name, date of birth and physical description of violator. When valid identification can not be obtained contact Enforcement for assistance with identifying the violator. Enforcement will search public record such as driver's license, auto registration, property ownership, etc.
- c. Ensure the Citation information is accurate, complete, and legible. Cite the appropriate chapter, section, and regulation number of the Maricopa County Environmental Health Code. Include a brief description of the violation.
- d. Provide on the Citation appropriate Justice Court, arraignment date and time. Refer to the Justice Court arraignment schedule and precinct boundary map for relevant information.
- e. Obtain the violator's signature and provide them the pink copy of Citation.
- f. Complete an Investigation Report Form that describes in detail the chronological collection and documentation of evidence supporting the violation.
- g. Distribute the white and blue Citation copies and the completed Investigative Report Form to the designated Justice Court within three working days after issuance of a Citation.
- h. Distribute to Enforcement the yellow Citation copy, completed Investigative Report Form, and all evidence supporting the violation, e.g.

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photographs (Digital photos are acceptable), videos, witness statements, correspondence, reports, records, and scientific test results.

After the citation is filed in Justice Court, Enforcement is responsible for representing the Department in proceedings involving the County Attorney and Justice Court. Appropriate Division personnel will be notified by Enforcement regarding court or pre-trial appearances (if necessary) and final disposition of the citation.

### 3. Probationary Letter

When repeated and/or continued violations are encountered, a probationary letter will be issued to the offender, prior to initiation of revocation action. This letter will state that failure to make corrections will result in action taken to revoke the permit.

- a. A probationary letter will be sent to a food or food production establishment as outlined in Environmental Health Division Policy EH-IN-27.
- b. A probationary letter will be sent to any other permitted establishments on which three consecutive inspections document the same critical violation (e.g. a second repeat of violation 5A or a second repeat of violation 21C).
- c. If a probationary letter has been issued within the previous six months, and serious, repetitive or continued violations of the Health Code reoccur, action will be initiated by the Environmental Health Division to revoke the establishment operating permit.
- d. Prior to approving revocation, the Regional Office Manager or Regional Office Lead Specialist will accompany the Environmental Health Specialist on an inspection of the establishment to verify existing violations.

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- e. The Regional Office Manager or Regional Office Lead Specialist will review the establishment file to assure that the action is appropriate and that the file is complete.
- f. A Legal Action Request Form (Appendix B) will be completed, attached to the establishment's file, and forwarded to the Division Manager.

4. Cease and Desist Order

- a. The Environmental Health Specialist shall give written notification to discontinue operation to the owner/operator of the facility and initiate a legal action request form. If an imminent health hazard exists, the Regional Office Manager or Regional Office Lead Specialist shall be notified immediately.
- b. When a Cease and Desist Order is necessary, a Legal Action Request Form will be completed by the Environmental Health Specialist.
- c. Submit to the Regional Office Manager for approval the Legal Action Request Form, establishment file, completed Investigative Report Form, and all evidence supporting the violation, e.g., photographs (Digital photos are acceptable), videos, witness statements, correspondence, reports, records, and scientific test results.
- d. Upon approval by the Division Manager, submit the Legal Action Request Form and supporting documentation and evidence to Enforcement.
- e. Then an imminent health hazard exists at a non-permitted establishment all paperwork may be hand carried (steps a through d) to Enforcement in order to expedite the Cease and Desist Order.

5. Abatement of Nuisance

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Pursuant to A.R.S. 36-602, when an Environmental Health Specialist determines that a nuisance, source of filth or cause of sickness exists on private property, the Environmental Health Specialist shall submit a Legal Action Request Form following the requirements under Section V.A.6 of this Policy.

6. Request for Legal Action

Use the Legal Action Request Form (Appendix B) to recommend any enforcement action listed in Section V.C of this policy. Submit a Legal Action Request Form following Division procedures and protocols to Enforcement.

7. Referral to ADEQ and/or State Attorney General

In carrying out the duties under the Delegation Agreement between the Arizona Department of Environmental Quality and Maricopa County, the Environmental Health Division shall comply with the provisions of the Delegation Agreement and observe and enforce the rules of ADEQ and the laws of the State of Arizona pertaining to the preservation of public health and protection of the environment.

Maricopa County can independently initiate enforcement action pursuant to its own authority. Under specific circumstances, Maricopa County may coordinate with or refer enforcement activities to ADEQ and/or the State Attorney General. Such decisions to refer/coordinate shall be initiated by the Environmental Health Division Manager, pursuant to approval by the Department Director.

B. Water & Waste Management Division Administrative Enforcement Action

1. Suspension

Water & Waste Management Division ("WWM") staff will follow suspension procedures in cases of

severe violations which present an imminent hazard to public health or the environment in a permitted

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establishment. Upon issuance of a Notice of Suspension, the holder of the permit may immediately move to vacate the Notice of Suspension and the Director shall hear such motion within five (5) days.

In no event may a Notice of Suspension remain in effect for more than twenty-five days. If violations are not corrected or a hearing is not requested within the twenty-five (25) day period, Enforcement or WWM staff shall file a revocation request with the Division Manager or take additional action to ensure compliance with the MCEHC.

## 2. Notice to Appear and Complaint (Citation)

A Citation may be issued for violations of the Environmental Health Code when written or verbal notification fails to achieve compliance. A person who violates Maricopa County Environmental Health Code regulations is guilty of a class 3 misdemeanor if the person holds a valid permit issued by Maricopa County Environmental Services Department or a class 2 misdemeanor if the person does not hold a valid permit (A.R.S. 36-183.03, 36-183.06, 36-183.07, and MCEHC Chapter I, Regulation 8).

The following procedure will be implemented when a citation is issued:

- a. Inform all individuals responsible for causing the violation of the associated health significance.
- b. Obtain a valid identification (Driver's license or other government issued ID) which includes the full name, date of birth and physical description of violator. When valid identification can not be obtained contact Enforcement for assistance with identifying the violator. Enforcement will search public record such as driver

license, auto registration, property ownership, etc.

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- c. Ensure the citation information is accurate, complete, and legible. Cite the appropriate chapter, section, and regulation number of the Maricopa County Environmental Health Code. Include a brief description of the violation.
- d. Provide on the citation appropriate Justice Court, arraignment date and time. Refer to the Justice Court arraignment schedule and precinct boundary map for relevant information.
- e. Obtain the violator's signature and provide them the pink copy of citation.
- f. The issuer will complete the Investigation Report Form noting concisely a chronological investigation summary of events which led to the issuance of the citation.
- g. Distribute the white and blue citation copies and the completed Investigative Report Form to the designated Justice Court within three working days of issuance of a citation.
- h. Distribute to Enforcement the yellow citation copy, the completed Investigative Report Form with any other pertinent documentation, e.g. photographs (Digital photos are acceptable), videos, witness statements, correspondence, reports, and scientific test results.

After the citation is filed in Justice Court, Enforcement is responsible for representing the Department in proceedings involving the County Attorney and Justice Court. All concerned personnel will be notified by Enforcement of court or pre-trial appearances (if necessary) and final disposition of case.



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### 3. Notice of Opportunity to Correct

Pursuant to A.R.S. 41-1009, a Notice of Opportunity to Correct letter may be issued when a violation is discovered. This letter will state that failure to make corrections will result in further legal action taken, or steps to revoke the permit.

- a. A Notice of Opportunity to Correct letter will be sent to any permitted establishments where inspections document a violation.
- b. If a Notice of Opportunity to Correct letter has been issued within the previous six months and violations of the Health Code reoccur, further legal action will be initiated by the WWM Division.
- c. Prior to approving further legal action or revocation, the WWM Division Manager may accompany the inspecting official on a final inspection of the establishment to verify existing violations.
- d. The WWM Division Manager will review the establishment file to assure that the action is appropriate and that the file is complete.
- e. A Request For Legal Action Form (Appendix B) will be completed, attached to the establishment's file, and forwarded to the Division Manager.
- f. The Division Manager will review the request and establishment file. Upon approval, all documents will be submitted to Enforcement.

### 4. Notice of Violation

- a. The WWM staff shall give written Notice of Violation to discontinue operating in an unapproved manner to the owner/operator of the facility prior to requesting legal action. If an imminent health hazard exists, the WWM Division Manager shall be notified immediately.

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- b. If the owner/operator refuses to cease operating in an unapproved manner, a Request For Legal Action Form will be completed by the WWM staff.
- c. The Request For Legal Action Form and the establishment file, including the completed Investigative Report Form and any other pertinent documentation, e.g. photographs (Digital photos are acceptable), videos, witness statements, correspondence, reports, and scientific test results, shall be forwarded to the WWM Division Manager for signature.
- d. The Division Manager will forward the request and file to Enforcement for review.
- e. When an imminent health hazard exists at a non-permitted establishment, all paperwork may be hand carried (steps a through d) to Enforcement in order to expedite the Cease and Desist Order.

5. Abatement of Nuisance

Pursuant to A.R.S. 36-602, when WWM staff determines that a nuisance, source of filth or cause of sickness exists on public or private property, the WWM staff shall submit a Request for Legal Action Form following the requirements under Section V.A.6 of this Policy.

6. Request for Legal Action

Use the Request For Legal Action Form (Appendix B) to recommend any enforcement action listed in Section V.C of this policy. Submit Request For Legal Action Form following Division procedures and protocols to Enforcement.

7. Referral to ADEQ and/or State Attorney General

In carrying out the duties under the Delegation Agreement between the Arizona Department of

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Environmental Quality and Maricopa County, WWM Division shall comply with the provisions of the Delegation Agreement and observe and enforce the rules of ADEQ and the laws of the State of Arizona pertaining to the preservation of public health and protection of the environment.

Maricopa County can independently initiate enforcement action pursuant to its own authority. Under specific circumstances, Maricopa County may coordinate with or refer enforcement activities to ADEQ and/or the State Attorney General. Such decisions to refer/coordinate shall be initiated by the WWM Division Manager, pursuant to approval by the Department Director.

C. Executive Administrative Services Enforcement Action

Upon receipt of a Legal Action Request Form, Enforcement will determine an appropriate enforcement response based on evidence supporting the violation. Enforcement may consult with the Division, Director, or Deputy County Attorney in order to determine the appropriate enforcement response.

1. Cease and Desist Order

Pursuant to A.R.S. 36-601.B, when the Director has reasonable cause to believe that a person is maintaining a nuisance or engaging in any practice contrary to the health laws or rules of the state, the Director shall forthwith serve upon such person by certified mail a Cease and Desist Order. The Order will state that within fifteen (15) days after receipt of the Order the person to whom it is directed may request the director to hold a hearing.

In general, the following procedures will be used to issue a Cease and Desist Order:

- a. Enforcement in consultation with a Deputy County Attorney will prepare the order for the Director's signature.

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- b. The Director shall serve the Order by certified mail notifying the person to cease and desist such acts that are in violation of applicable Arizona law and the Maricopa County Environmental Health Code.
- c. If a hearing request has not been received within the fifteen (15) days and the person to whom the Order is directed fails or refuses to comply with the Cease and Desist Order, Enforcement will consult with the Director and/or Deputy County Attorney to determine the appropriate enforcement response.

## 2. Permit Revocation

- a. Enforcement will review the file for completeness and to assure that procedures have been followed.
- b. Enforcement will prepare a Permit Revocation letter for the Director's signature.
- c. The Director shall notify, in writing, the holder of the permit that the permit shall be revoked at the end of twenty (20) days following service of the notice, unless a written request for a hearing is filed with the Director within such twenty (20) day period. The Permit Revocation letter shall list the specific reasons for the revocation.
- d. Enforcement will notify the Regional Office Manager as soon as the permit holder has been served with notice of revocation. Then the establishment will be posted with a yellow "Public Notice" (Appendix C). Enforcement will have the primary responsibility for posting the notice in accordance with MCEHC requirements. A citation may be issued for removal of the notice in violation of Chapter I, Regulation 7.b(3) of the MCEHC.
- e. If the permit holder does not file a request for hearing within the twenty (20) day period, the revocation of the permit will become

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final. If a request for hearing is filed within the prescribed time, a hearing shall be conducted by a Hearing Officer appointed by the Director. The hearing shall be conducted in accordance with requirements of A.R.S. Title 41, Chapter 6, Article 6.

- f. If the violations are corrected by the permit holder and the licensee agrees to sign a Stipulation and Order Agreement (Appendix E) rather than go to hearing, the stipulation period will ordinarily be six months. During this period the Regional Office Lead Specialist or Regional Office Manager will conduct inspections at the facility every six to eight weeks. When stipulation conditions are not met, a legal action request for revocation will be forwarded through proper channels to the Director. If warranted, the Director will send a certified letter return receipt requested to the owner stating that the permit has been revoked and the facility must cease operating upon receipt of the letter.
- g. When a permit is revoked, Enforcement will notify the Regional Office Manager that the return receipt was received. Then the facility will be posted with a red "CLOSED" sign (Appendix D). Enforcement will have the primary responsibility for posting the sign on the front door or front window in a manner so that the "CLOSED" sign is clearly visible to anyone entering the facility. A citation may be issued for removal of the notice in violation of Chapter I, Regulation 7.b(3) of the Maricopa County Environmental Health Code.

Following revocation, if the facility continues to operate, Enforcement will determine the most expeditious legal remedy to resolve the violation.

### 3. Abatement of Nuisance

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Pursuant to A.R.S. 36-602, when a nuisance, source of filth or cause of sickness exists on private property, the Director shall order the owner or occupant to remove it within twenty-four hours at the expense of the owner or occupant. If the order is not complied with, the Director may impose a civil penalty pursuant to A.R.S. 36-183.04 and shall cause the nuisance, source of filth or cause of sickness to be removed, and expenses of removal shall be paid by the owner, occupant or other person who caused the nuisance, source of filth or cause of sickness.

4. Notice of Violation; Compliance Order; Civil Penalties

Pursuant to A.R.S. 36-183.04, if the Director has reason to believe that a person violated any sanitary ordinance or regulation, the Director may issue a Notice of Violation and Demand for Compliance ("NOV") by certified or registered mail or by hand delivery to the respondent.

The NOV must state with reasonable specificity the nature of the violation and the deadline for compliance. The NOV shall also state that the respondent may request a hearing.

Unless the respondent either complies within the stated deadline or requests a hearing within fifteen (15) days after service of the NOV, the Director may issue a Compliance Order consistent with the terms of the NOV.

A Compliance Order issued pursuant to this section may provide for a civil penalty of not more than seven hundred fifty dollars for each violation by

an individual and not more than five thousand dollars for a violation by an enterprise.

5. Injunctive Relief; Consent Decree; Civil Penalties

Pursuant to A.R.S. 36-183.05, if the Director has reasonable cause to believe that a person violated any sanitary ordinance, regulation or order, the

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Director through the County Attorney may file an action in the Superior Court:

- a. For a temporary restraining order, a preliminary or permanent injunction or any other appropriate relief necessary to enjoin the person from further violations and to protect public health or the environment.
- b. To compel compliance with a nuisance abatement order or a compliance order, including the collection of civil penalties assessed under that order.
- c. For civil penalties of not to exceed one thousand dollars a day but not more than ten thousand dollars for each violation.

6. Mitigating or Aggravating Circumstances

- a. The following factors will be considered by the Director in determining whether to seek civil, and not criminal, sanctions:
  - (1) The matter involves potential penalties over \$2000.00.
  - (2) The matter involves a large corporation with extensive legal resources.
  - (3) The same defendant has been handled by civil review in the past, and the County Attorney has not referred the defendant for criminal prosecution.
  - (4) The matter was initiated as an administrative action or proceeding.
  - (5) The agency needs immediate action or a quick response, e.g., a temporary restraining order or injunction.
  - (6) The submittal was referred by the County Attorney Criminal Division for civil review.

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b. The Director will initiate civil sanctions under A.R.S. 36-183.04 for the following circumstances:

- (1) Any violation of Chapter VII of the Maricopa County Environmental Health Code with the exception of "Communicable Disease" as outlined in Regulation 6.
- (2) Any individual or enterprise that has received repeated criminal citations for violations of the Maricopa County Environmental Health Code.
- (3) Any individual or enterprise that shows disregard for public safety.

c. The Director will seek civil action under A.R.S. 36-183.05 for the following circumstances:

- (1) Violation of Chapter VII, Regulation 6 of the Maricopa County Environmental Health Code.
- (2) Any imminent health hazard that threatens the public or the environment.
- (3) Failure to abate a public health nuisance, or continuing to engage in any practice contrary to the health laws or rules of the State, following the issuance of a Compliance Order under A.R.S. 36-183.04 or an order issued pursuant to A.R.S. 36-602.
- (4) Other factors affecting the public health and safety the Director deems relevant.

#### DISCLAIMER

This policy is intended solely as guidance for Department personnel. It is not intended and may not be used to create rights enforceable by any party. Nothing in this policy is



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intended to limit the Department's enforcement discretion. Deviation from this policy will not prevent the Department from pursuing an enforcement action that is otherwise appropriate to the violation. This policy may be changed at any time without public notice.

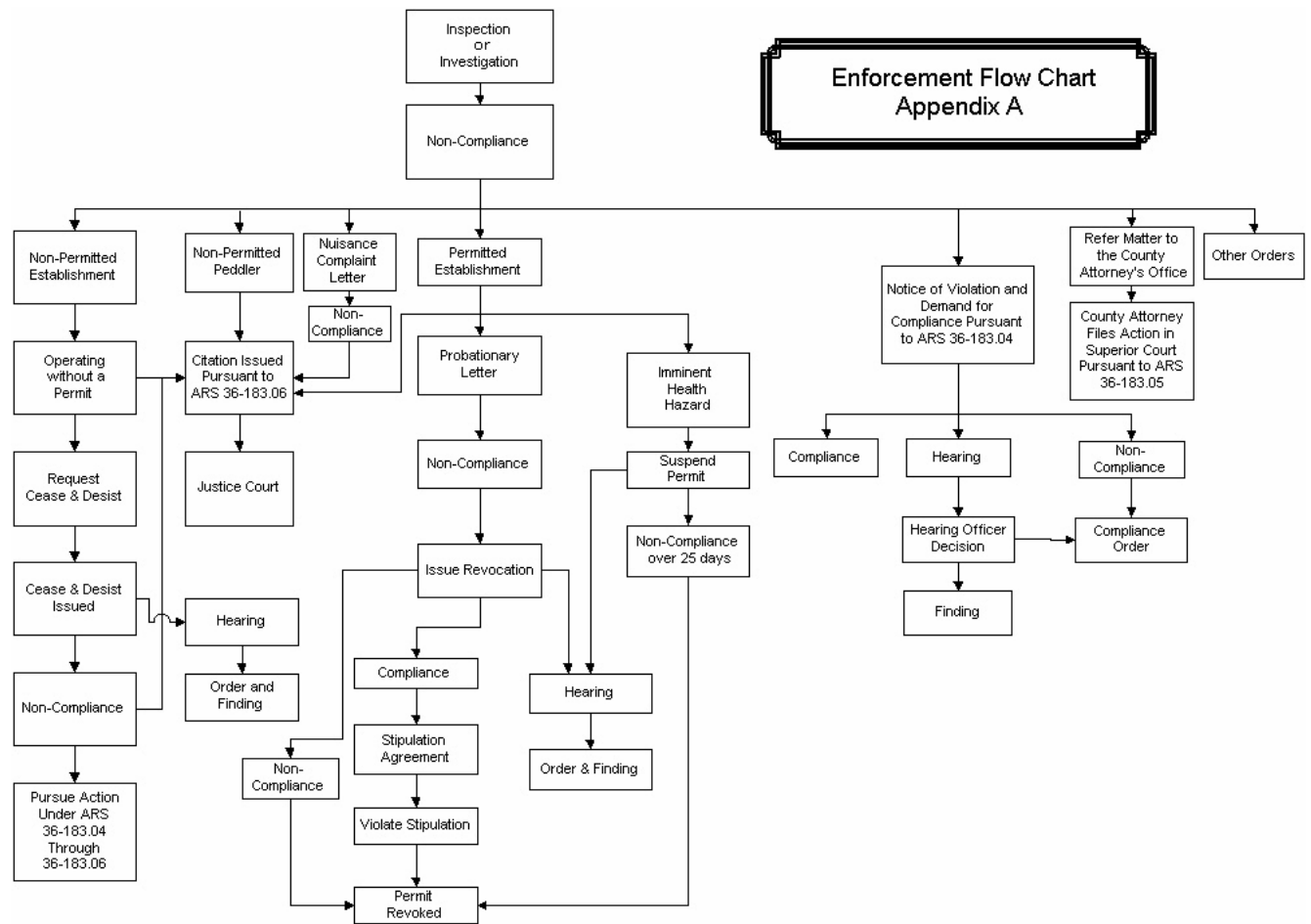
#### APPENDICES:

Appendix A - Health Code Enforcement Flow Chart  
Appendix B - Request For Legal Action  
Appendix C - Public Notice (Yellow Poster)  
Appendix D - CLOSED (Red Poster)

#### DISTRIBUTION:

Director's Office  
Executive Administrative Services  
Water and Waste Management Division  
Environmental Health Division

## Appendix A



## Appendix B

REGIONAL OFFICE: \_\_\_\_\_

## LEGAL ACTION REQUEST FORM

<b>REQUEST DATE:</b>	
<b>DISTRICT #:</b>	
<b>EHS NAME:</b>	
<b>ESTABLISHMENT:</b>	
<b>ADDRESS:</b>	
<b>CITY:</b>	
<b>PERMIT #:</b>	
<b>INSPECT DATE(S):</b>	
<b>REASON:</b>	
<b>ACTION TYPE:</b>	
<b>COMMENTS:</b>	

## LEGAL ACTION REQUEST REVIEW &amp; APPROVALS

	NAME	Approved	Disapproved	Date Signed
<b>Requested By:</b>				
<b>Manager:</b>				
<b>Div. Manager:</b>				
<b>Comments:</b>				
<b>Legal Liaison:</b>				
<b>Dept Manager</b>				
<b>Comments:</b>				

*FOR DIVISION INTERNAL USE ONLY:*

<i>Routed For:</i>	<i>Date</i>	<i>Doc Generated</i>	<i>Out for Sig #1</i>	<i>Sig #2 (if rqrd)</i>	<i>Letter Sent</i>
Warning Letter					
Revocation					
C&D					



Maricopa County

# PUBLIC NOTICE

**The Environmental Services Department Has Initiated Action To:**

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Public records concerning this Notice are available upon request from the Environmental Services Department.

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DIRECTOR



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ENVIRONMENTAL HEALTH OFFICER  
(PRINT NAME)

---

DATE

PHONE NUMBER

**Removal of this notice is illegal except by the Director or designee**

# CLOSED

**By Order of  
Maricopa County Environmental Services Department**

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NAME OF ESTABLISHMENT

ADDRESS

**This establishment fails to meet minimum standards as set forth by the Maricopa County Environmental Health Code.  
Public records concerning this Notice are available upon request from the Environmental Services Department.**

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DIRECTOR



ENVIRONMENTAL HEALTH OFFICER  
(PRINT NAME)

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DATE

PHONE NUMBER

DATE

PHONE NUMBER

**Removal of this notice is illegal except by Director or designee**

